

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-2186-IHW-E TCEQ ID: RN100574235 CASE NO.: 21962
RESPONDENT NAME: VAN DER HORST U.S.A. CORPORATION

Page 1 of 3

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 419 East Grove Street, Terrell, Kaufman County</p> <p>TYPE OF OPERATION: Electroplating facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 6, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Gary Shiu, Litigation Division, MC R-12, (713) 422-8916 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Mike Meyer, Waste Enforcement Section, MC 128, (512) 239-4492</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903</p> <p style="margin-left: 20px;">Respondent: Mr. James Reed, President, Van Der Horst U.S.A. Corporation, P.O. Box 428, Terrell, Texas 75160</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: September 22, 2006 (Investigation) and December 11, 2006 (Record Review)</p> <p>Date of NOE Relating to this Case: November 21, 2006</p> <p>Background Facts: The EDRP was filed and sent via certified mail, return receipt requested, and via first class mail, postage pre-paid, on June 6, 2008. According to the return receipt "green card", the Respondent received notice of the EDRP on June 11, 2008, as evidenced by the signature on the card. The Respondent has not filed an answer or requested a hearing.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>IHW:</p> <p>1. Failed to ensure containers of hazardous waste are always closed during storage, except when necessary to add or remove waste, and failed to label or mark containers with either the words "Hazardous Waste" or other words that would identify the contents of the container [30 TEX. ADMIN. CODE § 335.69(d)(1) and (2), and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 262.34].</p> <p>2. Failed to update the Notice of Registration ("NOR") and notify the Executive Director in writing or using electronic notification software provided by the Executive Director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities [30 TEX. ADMIN. CODE § 335.6(a) and (c)].</p>	<p>Total Assessed: \$44,685</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$44,685</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of the Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements: The Respondent shall undertake the following technical requirements.</p> <p>1. Immediately, ensure all containers of hazardous waste are closed and labeled with either the words "Hazardous Waste" or other words that identify the contents of the container.</p> <p>2. Within 30 days:</p> <p>a. Update the NOR to include the use of a new Container Storage Area near the former aircraft plating area in the northwest corner of the building and provide notification concerning all onsite recycling;</p> <p>b. Submit notice and documentation that shows spent kerosene in 55-gallon drums, four 300-gallon totes, and a half full 500-gallon tank of spent kerosene is being recycled rather than accumulated speculatively;</p> <p>c. Begin performing hazardous waste determinations on all waste generated at the Facility including the 55-gallon drum, the 20-gallon cardboard drum, and the 500-gallon tank located in the wastewater treatment/warehouse building; and</p> <p>d. Submit payment for outstanding fees, including any associated penalties and interest.</p> <p>3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>3. Failed to ensure that hazardous waste is not accumulated on-site for more than 90 days without a permit [30 TEX. ADMIN. CODE § 335.69(a) and 40 C.F.R. § 262.34(a)].</p> <p>4. Failed to conduct hazardous waste determinations [30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11].</p> <p>5. Failed to pay outstanding hazardous waste generation fees for TCEQ Financial Accounts Nos. 0300195G, 23703119 and 0500993 for fiscal year 2006 [30 TEX. ADMIN. CODE § 335.323 and TEX. WATER CODE § 5.702].</p>		



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	20-Nov-2006	Screening	7-Dec-2006	EPA Due	19-Feb-2007
	PCW	6-Nov-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Van Der Horst U.S.A. Corporation		
Reg. Ent. Ref. No.	RN100574235		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	31962	No. of Violations	5	
Docket No.	2006-2186-IHW-E	Order Type	1660	
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Michael Meyer	
Multi-Media		EC's Team	8	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$33,100

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 35% Enhancement Subtotals 2, 3, & 7 \$11,585

Notes The respondent has received one NOV for same or similar violations and one 1660 Agreed Order and is a poor performer.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The respondent does not meet the good faith criteria.

0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$1,300
Approx. Cost of Compliance \$30,225
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$44,685

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$44,685

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$44,685

DEFERRAL 0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement

PAYABLE PENALTY \$44,685

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance
History
Notes

The respondent has received one NOV for same or similar violations and one 1660 Agreed Order and is a poor performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.69(d)(1) and (2) and 40 Code of Federal Regulations § 262.34

Violation Description

Failed to ensure containers of hazardous waste are always closed during storage, except when it is necessary to add or remove waste. Also, failed to label or mark containers with either the words "Hazardous Waste" or other words that identify the contents of the container, as documented during an investigation conducted on September 22, 2006. Specifically, a 55 gallon drum in the Satellite Accumulation area and two containers of hazardous waste in the Container Storage Area were not kept closed and were not marked with the words "Hazardous Waste" or other words that identify the contents of the containers.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

231 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,000

Three single events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$4,050

This violation Final Assessed Penalty (adjusted for limits) \$4,050

Economic Benefit Worksheet

Respondent Van Der Horst U.S.A. Corporation
Case ID No. 31962
Reg. Ent. Reference No. RN100574235
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	Findings
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	22-Sep-2006	2-Jul-2007	0.8	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to cover and label hazardous waste containers from the investigation date to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$2

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 335.6(a) and (c)

Violation Description

Failed to update the Notice of Registration (NOR) and notify the Executive Director in writing or using electronic notification software provided by the Executive Director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities, as documented during an investigation conducted on September 22, 2006. Specifically, the NOR did not reference the use of a new Container Storage Area near the former aircraft plating area in the northwest corner of the building and the respondent was recycling spent kerosene as heating oil without notifying the TCEQ.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			X

Percent 1%

Matrix Notes

More than 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$135

This violation Final Assessed Penalty (adjusted for limits) \$135

Economic Benefit Worksheet

Respondent Van Der Horst U.S.A. Corporation
Case ID No. 31962
Reg. Ent. Reference No. RN100574235
Media Industrial and Hazardous Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	Findings
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$300	22-Sep-2006	2-Aug-2007	0.9	\$13	n/a	\$13

Notes for DELAYED costs

Estimated cost to submit a current NOR and notification of the types of waste recycled, from the investigation date to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$13

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 335.69(a) and 40 Code of Federal Regulations § 262.34(a)

Violation Description

Failed to ensure that hazardous waste is not accumulated on-site for more than 90 days without a permit, as documented during an investigation conducted on September 22, 2006. Specifically, 95 55-gallon drums, four 300-gallon totes, and a half full 500-gallon tank of spent kerosene was being accumulated speculatively for use as heating oil without demonstrating that material is not a waste and that there is a known market or disposition for the material.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3

77 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$15,000

Three monthly events are recommended from the investigation date of September 22, 2006 to the screening date of December 7, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,242

Violation Final Penalty Total \$20,250

This violation Final Assessed Penalty (adjusted for limits) \$20,250

Economic Benefit Worksheet

Respondent Van Der Horst U.S.A. Corporation
Case ID No. 31962
Reg. Ent. Reference No. RN100574235
Media Industrial and Hazardous Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	Findings
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$28,875	22-Sep-2006	2-Aug-2007	0.9	\$1,242	n/a	\$1,242
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated disposal cost from the date of the investigation to the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$28,875

TOTAL

\$1,242

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11

Violation Description

Failed to conduct hazardous waste determinations, as documented during an investigation conducted on September 22, 2006. Specifically, the respondent failed to conduct hazardous waste determinations on waste in a 55 gallon drum, a 20 gallon cardboard drum, and a half full 500 gallon tank located in the wastewater treatment/warehouse building.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human Health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3

231

Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$15,000

Three single events are recommended for each of the three waste streams.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$43

Violation Final Penalty Total \$20,250

This violation Final Assessed Penalty (adjusted for limits) \$20,250

Economic Benefit Worksheet

Respondent: Van Der Horst U.S.A. Corporation

Case ID No. 31962

Reg. Ent. Reference No. RN100574235

Media: Industrial and Hazardous Waste

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	Findings
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$1,000	22-Sep-2006	2-Aug-2007	0.9	\$43	n/a	\$43
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to perform hazardous waste determinations for the 55 gallon drum, the 20 gallon cardboard drum and the half full 500 gallon tank, from the date of the investigation to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$43

Screening Date 7-Dec-2006

Docket No. 2006-2186-IHW-E

PCW

Respondent Van Der Horst U.S.A. Corporation

Policy Revision 2 (September 2002)

Case ID No. 31962

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100574235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 335.323 and Tex. Water Code § 5.702

Violation Description

Failed to pay outstanding hazardous waste generation fees for the TCEQ Financial Account Nos. 0300195G, 23703119, and 0500993 for fiscal year 2006, as documented during a record review conducted on December 11, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

No penalty is calculated for this violation.

Adjustment \$10,000

\$0

Violation Events

mark only one with an x	daily
	monthly
	quarterly
	semiannual
	annual
	single event

161 Number of violation days

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Van Der Horst U.S.A. Corporation
Case ID No. 31962
Reg. Ent. Reference No. RN100574235
Media Industrial and Hazardous Waste
Violation No. 8

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator:	CN600284699	Van Der Horst U.S.A. Corporation	Classification: POOR	Rating: 84.00
Regulated Entity:	RN100574235	VAN DER HORST USA	Classification: POOR	Site Rating: 84.00

ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD007357932
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30391
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD007357932
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	KB00350
	STORMWATER	PERMIT	TXRNEQ663
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	30391

Location: 419 E GROVE ST, TERRELL, TX, 75160 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: December 12, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 12, 2001 to December 12, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Michael Meyer Phone: 512 239 4492

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A Effective Date: 05/12/2006 ADMINORDER 2005-1639-IHW-E

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11[G]

Description: Failure to conduct hazardous waste determinations and waste classifications.

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)[G]
Description: Failure to update Notice of Registration (NOR)

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
30 TAC Chapter 335, SubChapter C 335.69[G]

40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34

Description: Failure to meet accumulation time requirements

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(2)
30 TAC Chapter 335, SubChapter C 335.69(a)(3)

40 CFR Chapter 265, SubChapter I, PT 265, SubPT C 265.35

40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173[G]

Description: Failure to close, and label or mark containers of hazardous waste in Satellite Accumulation Areas

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

1 09/02/2004 (270214)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/26/2005 (403144)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)[G]

Description: Failure to update Notice of Registration (NOR)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)

30 TAC Chapter 335, SubChapter C 335.69[G]

40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34

Description: Failure to meet accumulation time requirements

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)

30 TAC Chapter 335, SubChapter F 335.170[G]

40 CFR Chapter 265, SubChapter I, PT 265, SubPT L 265.254

Description: Permit Required

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(b)

Description: Failure to Meet Accumulation Time Limit

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69[G]

40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34[G]

Description: Failure to close and label containers in Satellite Accumulation Areas

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.24(h)[G]

30 TAC Chapter 335, SubChapter A 335.6(a)

30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to provide notification and documentation of recycling activities.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST VAN DER HORST U.S.A.
CORPORATION;
RN100574235**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-2186-IHW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5 and 7 and TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Van Der Horst U.S.A. Corporation ("Van Der Horst").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Van Der Horst owns and operates an electroplating facility at 419 East Grove Street, Terrell, Kaufman County, Texas (the "Facility").
2. The Facility involves the management and/or disposal of industrial hazardous waste solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection conducted on September 22, 2006, a TCEQ DFW Regional Office investigator documented that Van Der Horst:
 - a. Failed to ensure containers of hazardous waste are always closed during storage, except when necessary to add or remove waste. Van Der Horst also failed to label or mark containers with either the words "Hazardous Waste" or other words that would identify the contents of the container. Specifically, a 55-gallon drum in the Satellite Accumulation Area and two containers of hazardous waste in the Container Storage Area were not kept closed and were not marked with the words "Hazardous Waste" or other words that identify the contents on the containers.

- b. Failed to update the Notice of Registration ("NOR") and notify the Executive Director in writing or using electronic notification software provided by the Executive Director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Specifically, the NOR did not reference the use of a new Container Storage Area near the former aircraft plating area in the northwest corner of the building and the respondent was recycling spent kerosene as heating oil without notifying the TCEQ.
 - c. Failed to ensure that hazardous waste is not accumulated on-site for more than 90 days without a permit. Specifically, ninety-five 55-gallon drums, four 300-gallon totes, and a half full 500-gallon tank of spent kerosene were being accumulated speculatively for use as heating oil without demonstrating that material is not a waste and that there is a known market for disposition of the material.
 - d. Failed to conduct hazardous waste determinations. Specifically, Van Der Horst failed to conduct hazardous waste determinations on waste in a 55-gallon drum, a 20-gallon cardboard drum, and a half full 500-gallon tank located in the wastewater treatment/warehouse building.
4. During a record review conducted on December 11, 2006, a TCEQ Central Office investigator documented that Van Der Horst failed to pay outstanding hazardous waste generation fees for TCEQ Financial Account Nos. 0300195G, 23703119 and 0500993 for fiscal year 2006.
5. Van Der Horst received notice of the violations on or about November 26, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Van Der Horst U.S.A. Corporation" (the "EDPRP") in the TCEQ Chief Clerk's office on June 6, 2008.
7. By letter dated June 6, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Van Der Horst with notice of the EDPRP. According to the return receipt "green card", Van Der Horst received notice of the EDPRP on June 11, 2008, as evidenced by the signature on the card.

8. More than 20 days have elapsed since Van Der Horst received notice of the EDPRP, provided by the Executive Director. Van Der Horst failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Van Der Horst is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Van Der Horst failed to ensure containers of hazardous waste are always closed during storage, except when necessary to add or remove waste. Van Der Horst also failed to label or mark containers with either the words "Hazardous Waste" or other words that would identify the contents of the container. Specifically, a 55-gallon drum in the Satellite Accumulation Area and two containers of hazardous waste in the Container Storage Area were not kept closed and were not marked with the words "Hazardous Waste" or other words that identify the contents on the containers, in violation of 30 TEX. ADMIN. CODE § 335.69(d)(1) and (2) and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 262.34.
3. As evidenced by Finding of Fact No. 3.b., Van Der Horst failed to update the Notice of Registration ("NOR") and notify the Executive Director in writing or using electronic notification software provided by the Executive Director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Specifically, the NOR did not reference the use of a new Container Storage Area near the former aircraft plating area in the northwest corner of the building and the respondent was recycling spent kerosene as heating oil without notifying the TCEQ, in violation of 30 TEX. ADMIN. CODE § 335.6(a) and (c).
4. As evidenced by Finding of Fact No. 3.c., Van Der Horst failed to ensure that hazardous waste is not accumulated on-site for more than 90 days without a permit. Specifically, ninety-five 55-gallon drums, four 300-gallon totes, and a half full 500-gallon tank of spent kerosene were being accumulated speculatively for use as heating oil without demonstrating that material is not a waste and that there is a known market for disposition of the material, in violation of 30 TEX. ADMIN. CODE § 335.69(a) and 40 C.F.R. § 262.34(a).
5. As evidenced by Finding of Fact No. 3.d., Van Der Horst failed to conduct hazardous waste determinations. Specifically, Van Der Horst failed to conduct hazardous waste determinations on waste in a 55-gallon drum, a 20-gallon cardboard drum, and a half full

500-gallon tank located in the wastewater treatment/warehouse building, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11.

6. As evidenced by Finding of Fact No. 4, Van Der Horst failed to pay outstanding hazardous waste generation fees for TCEQ Financial Account Nos. 0300195G, 23703119 and 0500993 for fiscal year 2006, in violation of 30 TEX. ADMIN. CODE § 335.323 and TEX. WATER CODE § 5.702.
7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Van Der Horst with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 8, Van Der Horst has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Van Der Horst and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Van Der Horst for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of forty-four thousand six hundred eighty-five dollars (\$44,685.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Van Der Horst is assessed an administrative penalty in the amount of forty-four thousand six hundred eighty-five dollars (\$44,685.00) for violations of TEX. HEALTH & SAFETY CODE ch. 361, TEX. WATER CODE ch. 5, and rules of the TCEQ. The payment of this administrative penalty and Van Der Horst's compliance with all the terms and conditions set forth in this

Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Van Der Horst U.S.A. Corporation; Docket No. 2006-2186-IHW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Van Der Horst shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Van Der Horst shall ensure all containers of hazardous waste are closed and labeled with either the words "Hazardous Waste" or other words that identify the contents of the container, in accordance with 30 TEX. ADMIN. CODE § 335.69(d)(1) and (2) and 40 C.F.R § 262.34;
- b. Within 30 days after the effective date of this Order, Van Der Horst shall:
 - i. Update the NOR to include the use of a new Container Storage Area near the former aircraft plating area in the northwest corner of the building and provide notification concerning all onsite recycling, in accordance with 30 TEX. ADMIN. CODE § 335.6(a) and (c). Additionally, Van Der Horst shall submit copies of the updated NOR to the addresses listed in Ordering Provision 2.c. and also to:

Registration and Reporting Section
Permitting and Remediation Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Submit notice and documentation to the addresses listed in Ordering Provision 2.c., that shows spent kerosene in 55-gallon drums, four 300-gallon totes, and a half full 500-gallon tank of spent kerosene is being recycled rather than

accumulated speculatively, in accordance with 30 TEX. ADMIN. CODE § 335.69(a) and 40 C.F.R § 262.34(a);

- iii. Begin performing hazardous waste determinations on all waste generated at the Facility including the 55-gallon drum, the 20-gallon cardboard drum, and the 500-gallon tank located in the wastewater treatment/warehouse building, in accordance with 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R § 262.11;
- iv. Submit payment for outstanding fees, including any associated penalties and interest and with the notation, "Van Der Horst U.S.A. Corporation, Account Nos. 0300195G, 23703119, and 0500993", to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- c. Within 45 days after the effective date of the Commission Order, Van Der Horst shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.i. through 2.b.iv. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sam Barrett
Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Van Der Horst. Van Der Horst is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Van Der Horst fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Van Der Horst's failure to comply is not a violation of this Order. Van Der Horst shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Van Der Horst shall notify the Executive Director within seven days after Van Der Horst becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Van Der Horst shall be made in writing to the Executive Director. Extensions are not effective until Van Der Horst receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Van Der Horst if the Executive Director determines that Van Der Horst has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ROBERT R. MOSLEY

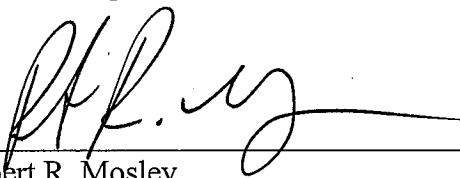
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Robert R. Mosley. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Van Der Horst U.S.A. Corporation" (the "EDPRP") with the Office of the Chief Clerk on June 6, 2008.

I sent the EDPRP to Van Der Horst at its last known address on June 6, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Van Der Horst received notice of the EDPRP on June 11, 2008, as evidenced by the signature on the card.

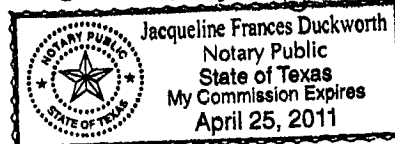
More than 20 days have elapsed since Van Der Horst received notice of the EDPRP. Van Der Horst failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".



Robert R. Mosley
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Robert R. Mosley, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 5th day of August, A.D., 2008.



Notary Stamp

Notary Signature